deductions have no application, how-ever, to situations involving refusal or failure to pay the full amount of wages due. See part 531 of this chapter; also § 778.306. It should be noted that al-though an employer may penalize an employee for lateness subject to the limitations stated above by deducting a half hour's straight time pay from his wages, for example, for each half hour, or fraction thereof of his late-ness, the employer must still count as hours worked all the time actually worked by the employee in deter-mining the amount of overtime com-pensation due for the workweek.

[46 FR 7314, Jan. 23, 1981]

LUMP SUM ATTRIBUTED TO OVERTIME

§ 778.308 The overtime rate is an hour-ly rate.

(a) Section 7(a) of the Act requires the payment of overtime compensation for hours worked in excess of the appli-cable maximum hours standard at a rate not less than one and one-half times the regular rate. The overtime rate, like the regular rate, is a rate per hour. Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived, as previously explained, by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7(e)(5), (6), or (7), the extra compensation for overtime hours must be paid pursuant to a premium rate which is likewise a rate per hour (sub-ject to certain statutory exceptions discussed in §§ 778.400 through 778.421).

(b) To qualify under section 7(e)(5), the overtime rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the non-overtime rate, such as one and one-third, one and one-half or two times that rate. To qualify under section 7(e) (6) or (7), the overtime rate may not be less than one and one-half times the bonafide rate established in good faith for like work performed during non-overtime hours. Thus, it may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for ex-ample, double time); or it may be a

fixed sum of money per hour which is, as an arithmetical fact, at least one and one-half times the nonovertime rate for example, if the nonovertime rate is $5 per hour, the overtime rate may not be less than $7.50 but may be set at a higher arbitrary figure such as $8 per hour.

[33 FR 986, Jan. 26, 1968, as amended at 46 FR 7314, Jan. 23, 1981]

§ 778.309 Fixed sum for constant amount of overtime.

Where an employee works a regular fixed number of hours in excess of the statutory maximum each workweek, it is, of course, proper to pay him, in ad-dition to his compensation for non-overtime hours, a fixed sum in any such week for his overtime work, de-termined by multiplying his overtime rate by the number of overtime hours regularly worked.

§ 778.310 Fixed sum for varying amounts of overtime.

A premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per hour basis. For example, an agreement that provides for the payment of a flat sum of $75 to employees who work on Sunday does not provide a premium which will qual-ify as an overtime premium, even though the employee's straight time rate is $5 an hour and the employee al-ways works less than 10 hours on Sun-day. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $75 or time and one-half the employee's reg-ular rate for all hours worked on Sun-day, whichever is greater, the $75 guar-anteed payment is not an overtime pre-mium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed sal-ary regardless of the number of hours worked in excess of the applicable max-imum hours standard could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum num-ber of hours that would be worked. The